

EXHIBIT 6

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION
3
4

5 CHASOM BROWN, WILLIAM BYATT,
6 JEREMY DAVIS, CHRISTOPHER
7 CASTILLO, and MONIQUE
8 TRUJILLO, individually and on
9 behalf of all other similarly
10 situated,
11

12 Plaintiffs,

13 No.

14 vs.

15 4:20-cv-03664-YGR-SVK

16 GOOGLE LLC,
17

18 Defendant.
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_____ /

26 VIDEOTAPED DEPOSITION OF BRUCE SCHNEIER
27 Remote Zoom Proceedings
28 Cambridge, Massachusetts
29 Monday, July 18, 2022
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35

36 REPORTED BY:

37 LESLIE ROCKWOOD ROSAS, RPR, CSR 3462

38 Pages 1 - 233

39 Job No. 5312337

40 Page 1

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION
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Plaintiffs,
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vs. 4:20-cv-03664-YGR-SVK
10
GOOGLE LLC,
11
Defendant.
12 _____/
13
14
15 Videotaped deposition of BRUCE SCHNEIER,
16 taken on behalf of Defendant, Remote Zoom Proceedings
17 from Cambridge, Massachusetts, beginning at 11:03 a.m.
18 Eastern Daylight Time and ending at 7:20 p.m. Eastern
19 Daylight Time, on Monday, July 18, 2022, before
20 Leslie Rockwood Rosas, RPR, Certified Shorthand Reporter
21 No. 3462.
22
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24
25

Page 2

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22 Also Present:
23 Elvert Ling, Quinn & Emanuel summer associate
24 Haimin Zhang, Analysis Group
25 Robert Fenton, Videographer

Page 4

1 INDEX
2
3
4 MONDAY, JULY 18, 2022
5
6 WITNESS EXAMINATION
7 BRUCE SCHNEIER
8
9 BY MR. BROOME 10
10 BY MR. CROSBY 220
11
12
13
14 QUESTIONS WITNESS INSTRUCTED NOT TO ANSWER:
15 (NONE)
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Page 5

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|--------|--|-----|--------|---|----------|
| 1 | DEPOSITION EXHIBITS | | 1 | Cambridge, Massachusetts; Monday, July 18, 2022 | |
| 2 | BRUCE SCHNEIER | | 2 | 11:03 a.m. Eastern Daylight Time | |
| 3 | NUMBER DESCRIPTION IDENTIFIED | | 3 | --oOo-- | |
| 4 | Exhibit 1 Expert Report of Bruce | 16 | 4 | PROCEEDINGS | |
| 5 | Schneier, 04/15/22 | | 5 | 11:02:41 | |
| 6 | Exhibit 2 Data and Goliath: The Hidden | 58 | 6 | THE VIDEOGRAPHER: Good morning. We are on the | |
| 7 | Battles to Collect Your Data | | 7 | record. The time is 11:03 a.m. Eastern Time. Today is | |
| 8 | and Control Your World, by | | 8 | July 18th, 2022. | |
| 9 | Bruce Schneier | | 9 | Please note that this deposition is being | |
| 10 | Exhibit 3 Data and Goliath: The Hidden | 60 | 10 | conducted virtually. The quality of recording depends on | 11:03:02 |
| 11 | Battles to Collect Your Data | | 11 | the quality of camera and internet connection of | |
| 12 | and Control Your World, by | | 12 | participants. What is seen from the witness and heard on | |
| 13 | Bruce Schneier | | 13 | screen is what will be recorded. | |
| 14 | Exhibit 4 Ask the Decoder: How Private | 70 | 14 | Audio and video recording will continue to take | |
| 15 | is Private Browsing, Really? | | 15 | place unless all parties agree to go off the record. | 11:03:17 |
| 16 | By Sara M. Watson, 09/24/14 | | 16 | This is Media Unit 1 of the video-recorded | |
| 17 | Exhibit 5 Schneier on Security: Click | 72 | 17 | deposition of Bruce Schneier, taken by counsel for | |
| 18 | Here to Kill Everybody | | 18 | defendant, in the matter of Chasom Brown versus Google | |
| 19 | Endnotes | | 19 | LLC, filed in the United States District Court, Northern | |
| 20 | Exhibit 6 Google's Chrome Incognito | 75 | 20 | Division of California, San Jose, Case Number | 11:03:37 |
| 21 | Mode is Way Less Private Than | | 21 | 4:20-cv-03664-YGR-SVK. | |
| 22 | You Think, by Laurie Clarke | | 22 | This deposition is being conducted remotely | |
| 23 | | | 23 | using virtual technology. My name is Rob Fenton, | |
| 24 | | | 24 | representing Veritext Legal Solutions, and I am the | |
| 25 | | | 25 | videographer. The court reporter is Leslie Rosas from | 11:04:03 |
| Page 6 | | | Page 8 | | |
| 1 | Exhibit 7 Journal of Cybersecurity, | 133 | 1 | the firm Veritext Legal Solutions. | |
| 2 | Research Paper, Privacy | | 2 | I am not related to any party in this action, | |
| 3 | Threats in Intimate | | 3 | nor am I financially interested in the outcome. | |
| 4 | Relationships, by Karen Levy | | 4 | If there are any objections to proceeding, | |
| 5 | and Bruce Schneier | | 5 | please state them at the time of your appearance. | 11:04:17 |
| 6 | Exhibit 8 Google Privacy Policy, | 163 | 6 | Counsel and all present, including remotely, | |
| 7 | GOOG-CABR-00001107 - 134 | | 7 | will now state their appearances and affiliations for the | |
| 8 | Exhibit 9 Expert Rebuttal Report of | 184 | 8 | record, beginning with the noticing attorney. | |
| 9 | Bruce Schneier Rebuttal of | | 9 | MR. BROOME: Good morning. Stephen Broome from | |
| 10 | Expert Georgios Zervas, | | 10 | Quinn Emanuel on behalf of Google, and I'm joined in the | 11:04:30 |
| 11 | 06/07/22 | | 11 | room by my colleague Aly Olson and our summer associate, | |
| 12 | Exhibit 10 Google Chrome Privacy Notice, | 223 | 12 | Elvert Ling. | |
| 13 | Last Modified 05/20/20, | | 13 | MR. CROSBY: Ian Crosby from Susman Godfrey for | |
| 14 | GOOG-CABR-00002522 - 539 | | 14 | the Plaintiff Class and for the witness. | |
| 15 | Exhibit 11 Google Privacy Policy, | 224 | 15 | MR. FRAWLEY: Alex Frawley for Susman Godfrey | 11:04:51 |
| 16 | effective 02/10/22 | | 16 | for plaintiffs and the witness. | |
| 17 | | | 17 | MR. MAO: Mark Mao, Boies, Schiller & Flexner, | |
| 18 | | | 18 | also for the plaintiffs. | |
| 19 | | | 19 | Just real quickly, if you don't mind, Steve, I | |
| 20 | | | 20 | also have Mr. John Yanchunis from Morgan & Morgan for the | 11:05:09 |
| 21 | | | 21 | plaintiffs here. | |
| 22 | | | 22 | MR. BROOME: Yes. Thank you, Mark. | |
| 23 | | | 23 | THE REPORTER: All right. I'll go ahead and | |
| 24 | | | 24 | swear you in, Mr. Schneier. | |
| 25 | | | 25 | If you would raise your right hand, please. | |
| Page 7 | | | Page 9 | | |

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| <p>1 Thank you.</p> <p>2 You do solemnly state that the evidence you</p> <p>3 shall give in this matter shall be the truth, the whole</p> <p>4 truth, and nothing but the truth, so help you God?</p> <p>5 THE WITNESS: Can we do that again without the 11:05:31</p> <p>6 God part?</p> <p>7 THE REPORTER: Yes.</p> <p>8 THE WITNESS: Thank you.</p> <p>9 THE REPORTER: You do solemnly state and affirm</p> <p>10 that you will tell the truth, the whole truth, and</p> <p>11 nothing but the truth?</p> <p>12 THE WITNESS: I do.</p> <p>13 THE REPORTER: Thank you.</p> <p>14</p> <p>15 EXAMINATION</p> <p>16 BY MR. BROOME:</p> <p>17 Q. Good morning, Mr. Schneier.</p> <p>18 A. Good morning.</p> <p>19 Q. Is it Mr. Schneier or Dr. Schneier, or what do</p> <p>20 you prefer I use? 11:05:56</p> <p>21 A. Mister is -- Mister more accurate.</p> <p>22 Q. Okay. You've been deposed before. "Yes"?</p> <p>23 A. I have.</p> <p>24 Q. So you're familiar with the process?</p> <p>25 A. Yes. First time on Zoom, though. Kind of 11:06:08</p> <p style="text-align: right;">Page 10</p> | <p>1 during the course of the deposition on your phone or any</p> <p>2 other devices; is that okay?</p> <p>3 A. Yes.</p> <p>4 Q. Except at the breaks, which is fine.</p> <p>5 Do you have any documents with you? 11:07:17</p> <p>6 A. Yes, I do.</p> <p>7 Q. What do you have?</p> <p>8 A. I have a bunch of the documents in the case, I</p> <p>9 have various expert reports and rebuttals, I have the</p> <p>10 Third Amended Complaint (indicating). I have various 11:07:31</p> <p>11 Google policies printed out.</p> <p>12 Q. Okay.</p> <p>13 A. I have a copy of Data and Goliath and Click Here</p> <p>14 to Kill Everybody.</p> <p>15 Q. Thank you. 11:07:40</p> <p>16 A. I thought that might be needed.</p> <p>17 Q. Yep.</p> <p>18 A. And I have a blank notepad and a pen in case</p> <p>19 that's needed.</p> <p>20 Q. Okay. All right. 11:07:51</p> <p>21 So with respect to the documents that you have</p> <p>22 around you, I'd just ask that you not review any of those</p> <p>23 documents unless you alert me to the fact that you're</p> <p>24 reviewing the documents in hard copy as opposed to on the</p> <p>25 Exhibit Share. I'd like to -- 11:08:06</p> <p style="text-align: right;">Page 12</p> |
| <p>1 exciting.</p> <p>2 Q. Okay, good. And you spent some time yesterday</p> <p>3 with plaintiffs' counsel, I assume, and discussed the</p> <p>4 process with them?</p> <p>5 A. I did. 11:06:19</p> <p>6 Q. Okay. All right. So I won't -- I won't bore</p> <p>7 you with those questions.</p> <p>8 Is anyone in the room with you today?</p> <p>9 A. There is nobody.</p> <p>10 Q. On your computer screen, do you have any 11:06:28</p> <p>11 communication applications open?</p> <p>12 A. I have this. I have Zoom open and I have my</p> <p>13 browser open.</p> <p>14 Q. Okay. And you've got your browser open for the</p> <p>15 Exhibit Share? 11:06:41</p> <p>16 A. Yeah, whatever that system is called.</p> <p>17 Q. And do you have that up and running already?</p> <p>18 A. I do. And I'm in the Marked Exhibits folder.</p> <p>19 Q. Okay, great.</p> <p>20 And when we upload an exhibit to Exhibit Share, 11:06:51</p> <p>21 you may need to refresh your browser.</p> <p>22 A. Got it.</p> <p>23 Q. Do you have your phone nearby?</p> <p>24 A. I do.</p> <p>25 Q. Okay. I just ask that you not communicate 11:07:05</p> <p style="text-align: right;">Page 11</p> | <p>1 A. I prefer to read in hard copy. It's easier for</p> <p>2 me. So -- so I'd like to, but, yes, not without --</p> <p>3 Q. All right. Just let me know when you're doing</p> <p>4 that as opposed to reviewing on the screen.</p> <p>5 You mentioned that you have some of the expert 11:08:22</p> <p>6 reports there. Which -- which expert reports have you</p> <p>7 read in this case?</p> <p>8 A. So I have mine, my reports and my rebuttal</p> <p>9 (indicating). And then I have Psounis, I have Schwartz,</p> <p>10 I have Amir rebuttal, and I did read Hochman, but I don't 11:08:48</p> <p>11 have it with me.</p> <p>12 And I -- yeah. I think that was it.</p> <p>13 Q. Okay. Did you read the plaintiffs' expert</p> <p>14 reports, aside from your own?</p> <p>15 A. What are they? You've got to remind me what 11:09:03</p> <p>16 they are and I'll let you know.</p> <p>17 Q. Yeah, sure.</p> <p>18 A. Are you asking me to review for this case or</p> <p>19 ever?</p> <p>20 Q. Well, I presume that you wouldn't have read any 11:09:11</p> <p>21 of the plaintiffs' expert reports outside the context of</p> <p>22 this case. Is that presumption incorrect?</p> <p>23 A. Of course.</p> <p>24 Q. Yeah. Okay.</p> <p>25 So with respect to the expert reports that the 11:09:23</p> <p style="text-align: right;">Page 13</p> |


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| <p>1 opine that Google's use of the word "privately" --</p> <p>2 "privately" would be understood by a reasonable consumer</p> <p>3 to mean a particular thing, and then say that you're not</p> <p>4 focused on the users.</p> <p>5 A. Okay. 13:46:11</p> <p>6 Q. If you can help me understand that a little bit</p> <p>7 better.</p> <p>8 A. I think I have. You might be at a point where</p> <p>9 you can't understand it.</p> <p>10 Q. Yeah. Okay, I'm going to take one more shot at 13:46:20</p> <p>11 this.</p> <p>12 Let's go to paragraph 307.</p> <p>13 A. All right.</p> <p>14 Q. You say: "Consistent with plaintiffs'</p> <p>15 deposition testimony, no reasonable user would interpret 13:47:02</p> <p>16 Google's disclosures as permitting the collection of</p> <p>17 their private browsing information."</p> <p>18 Do you see that?</p> <p>19 A. I do.</p> <p>20 Q. How can you opine that no reasonable user would 13:47:15</p> <p>21 interpret Google's disclosures as permitting the</p> <p>22 collection of their private browsing information?</p> <p>23 A. And that's looking at Google's disclosures.</p> <p>24 Q. Uh-huh.</p> <p>25 A. Seeing what they say, applying my experience as 13:47:32</p> <p style="text-align: right;">Page 94</p> | <p>1 unreasonable?</p> <p>2 A. No, I'm going to back off again. I'm not</p> <p>3 writing about users. I'm writing about the disclosures,</p> <p>4 and you're moving the focus on users. When you say it,</p> <p>5 it just feels like, no, I didn't opine that. I'm writing 13:49:07</p> <p>6 about the disclosures.</p> <p>7 Q. Well, you're writing about what reasonable users</p> <p>8 would interpret. Those are the words you used; right?</p> <p>9 A. Yeah, those are the words I used, and they're</p> <p>10 about the disclosures. 13:49:27</p> <p>11 Q. Do you think that maybe you should have not used</p> <p>12 the words "reasonable users" in your report?</p> <p>13 A. I don't know. I mean, what else would I use? I</p> <p>14 mean, how would you describe this? Because it's</p> <p>15 communication. In sentences that don't have something of 13:49:38</p> <p>16 a recipient.</p> <p>17 Q. Well, you could just say Google's disclosures</p> <p>18 say X or Y and do not say, A, B, C. But for some reason,</p> <p>19 you have -- and look, I understand the reason because the</p> <p>20 case turns in part on what -- some of the claims turn in 13:49:56</p> <p>21 part on what reasonable users interpret; right?</p> <p>22 A. Right.</p> <p>23 Q. And that's why the lawyers are fighting that</p> <p>24 issue out. What's a reasonable interpretation, what's an</p> <p>25 unreasonable interpretation. And in your report, you 13:50:07</p> <p style="text-align: right;">Page 96</p> |
| <p>1 a security and privacy expert, and applying the</p> <p>2 methodologies that are used in privacy disclosures and</p> <p>3 generally accepted and known by people who write them and</p> <p>4 interpret them, and coming up with an opinion.</p> <p>5 Q. The implication of this sentence is that if 13:47:58</p> <p>6 somebody interpreted Google's disclosures as permitting</p> <p>7 the collection of their private browsing information,</p> <p>8 that they would be unreasonable.</p> <p>9 Do you agree with that?</p> <p>10 A. Ask your sentence again. I focused on the last 13:48:17</p> <p>11 word and missed the beginning of it.</p> <p>12 Q. Yeah.</p> <p>13 A. I'm sorry.</p> <p>14 Q. The implication of this sentence is that if a</p> <p>15 user interpreted Google's disclosures as permitting the 13:48:26</p> <p>16 collection of their private browsing information, that</p> <p>17 user would be unreasonable.</p> <p>18 Do you agree with that?</p> <p>19 A. Yes.</p> <p>20 Q. And is that your opinion? 13:48:40</p> <p>21 A. What's the difference?</p> <p>22 Q. Yeah, fair.</p> <p>23 Your opinion is that if a user interpreted</p> <p>24 Google's disclosures as permitting the collection of</p> <p>25 their private browsing information, that user would be 13:48:54</p> <p style="text-align: right;">Page 95</p> | <p>1 incorporate the concept of the reasonable user, and you</p> <p>2 make affirmative statements about what a reasonable user</p> <p>3 would expect and what a reasonable user would interpret.</p> <p>4 And so I guess what I'm hearing from you is it's</p> <p>5 not actually about the users. 13:50:23</p> <p>6 And so my question is: Do you think it was a</p> <p>7 mistake to incorporate the concept of the reasonable user</p> <p>8 into your report?</p> <p>9 A. So I don't. I mean, that's the kind of language</p> <p>10 we use when we talk about disclosures in general. So the 13:50:35</p> <p>11 language is -- the language is right. But when it's</p> <p>12 focused on did this user think that, and now what's</p> <p>13 reasonable, what's not reasonable.</p> <p>14 What I mean by the reasonable user is what is --</p> <p>15 what's expected of the discloser. And I mean, I go back 13:51:04</p> <p>16 to the nutritional label. You know, we have a lot of</p> <p>17 language about nutritional labels and what should be on</p> <p>18 there. And they're based on -- on -- on reasonable</p> <p>19 users, but they're -- but still the focus is on the</p> <p>20 information and what it says and it conveys facts about 13:51:25</p> <p>21 the food that we're eating.</p> <p>22 Q. Okay. You just said the focus is not on, you</p> <p>23 know, what's reasonable to believe and what's not</p> <p>24 reasonable to believe. I think that's what you said;</p> <p>25 right? 13:51:54</p> <p style="text-align: right;">Page 97</p> |

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| <p>1 A. I trust you. We've done it so many times, I 2 forget.</p> <p>3 Q. No, this is an important issue so bear with me. 4 I appreciate your patience.</p> <p>5 But you do actually opine on what is not 13:52:03 6 reasonable for a user to interpret based on Google's 7 disclosures. That's what you said in 307; right?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. So at least part of your focus is on what 10 reasonable users would interpret from Google's 13:52:21 11 disclosures; correct?</p> <p>12 A. It feels like the same phrase but different 13 wording that I'm using throughout.</p> <p>14 Q. Yeah, but I mean, I guess going back to, you 15 know, you said the focus is not on what reasonable users 13:52:42 16 would or would not interpret, at least with respect to 17 307. Then some of the other paragraphs we looked at, the 18 focus is on -- your focus is on what reasonable users 19 would expect.</p> <p>20 A. Mine is not. Yours is. 13:52:55</p> <p>21 Q. Well, you say no reasonable user would interpret 22 Google's disclosures as permitting the collection of 23 their private browsing information. And then I asked you 24 isn't the implication indication of that, that a user who 25 interpreted Google's disclosures as permitting the 13:53:15</p> <p style="text-align: right;">Page 98</p> | <p>1 Q. Sure, yeah.</p> <p>2 A. Okay. Then yes.</p> <p>3 Q. Okay. And you're asking whether it's a specific 4 meaning of "private" as opposed to the specific meaning 5 of "private" because private can mean different things? 13:55:23</p> <p>6 A. You know, "private" has a meaning and it has a 7 dictionary definition. You know, what is private is very 8 fluid. So you need to think about what aspect of the 9 word you're asking me about.</p> <p>10 Q. Well, what do you mean by -- does a word have 13:55:45 11 different aspects?</p> <p>12 A. Yeah. I mean, so by "private," I mean there's 13 private as in what I'm doing, no one else can see. 14 Right? That's consistent. But is it about my salary, is 15 it about my -- I don't know -- my personal proclivities? 13:56:04</p> <p>16 That is more context dependent.</p> <p>17 Q. I see. Okay.</p> <p>18 Can the meaning of the word "private," the words 19 "private" and "privacy" change depending on the context 20 in which they are used? 13:56:22</p> <p>21 A. I'm pausing because it's actually a more 22 complicated question than you think.</p> <p>23 Q. Okay.</p> <p>24 A. The general meaning is the same, but I think 25 like any word in the English language, there are going to 13:56:36</p> <p style="text-align: right;">Page 100</p> |
| <p>1 collection of their private browsing information, that 2 that user is unreasonable, and you said "yes"?</p> <p>3 MR. CROSBY: Object to the form.</p> <p>4 THE WITNESS: Yeah, I keep saying that's not the 5 way I would write it, and I didn't write it that way. 13:53:28 6 And I don't think that the logic holds. And I'm trying 7 to explain why, and it's not working.</p> <p>8 Q. BY MR. BROOME: Yeah. Well, maybe we just 9 disagree. Okay. I think we can move on from that topic.</p> <p>10 Okay. So let's go back to Section 1.1 of your 13:53:56 11 report.</p> <p>12 A. Page number would be useful.</p> <p>13 Q. Yep, page 8. Are you there?</p> <p>14 A. Yes, I'm sorry. Yes.</p> <p>15 Q. The heading there is: "'Private' and 'Privacy' 13:54:34 16 Have Specific Meanings and Implications."</p> <p>17 Do you see that?</p> <p>18 A. I do.</p> <p>19 Q. What is the specific meaning of "private"?</p> <p>20 A. One hopes it's in this section. 13:54:50</p> <p>21 Q. Well, you have an Oxford English Dictionary 22 definition, paragraph 24.</p> <p>23 A. I see it.</p> <p>24 Q. Is that the specific meaning of "private"?</p> <p>25 A. Can we call it a specific meaning of private? 13:55:06</p> <p style="text-align: right;">Page 99</p> | <p>1 be nuances based on use. I don't think you're asking me 2 that.</p> <p>3 Q. Well, is there one singularly understood 4 definition of "privacy"?</p> <p>5 A. I mean the one I liked was, you know, the state 13:56:48 6 or condition of being alone, undisturbed, or free from 7 public attention, et cetera. Now I thought that was a 8 good one, which is why I used it.</p> <p>9 Q. Okay. In Data and Goliath -- I'm not going to 10 go back to the book. I'll just read you something that 13:57:09 11 you wrote, and I just want to know if you still agree 12 with it. You're welcome to go back to the exhibit if you 13 like.</p> <p>14 You wrote: "Our personal definitions of privacy 15 are both cultural and situational. They were different a 13:57:18 16 hundred years ago than they are today, and they'll be 17 different a hundred years from now. They're different in 18 the US than they are in Europe, Japan, and elsewhere. 19 And they're different across generations."</p> <p>20 Do you agree with that? 13:57:31</p> <p>21 A. I do.</p> <p>22 Q. Okay.</p> <p>23 A. And that's what I was talking about before. 24 That's exactly what I was talking about. What is private 25 in Japan is not what is private in the US; right? In 13:57:38</p> <p style="text-align: right;">Page 101</p> |

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| <p>1 this case, there was just a ruling where the salaries of 2 a bunch of attorneys was made public. That has different 3 private implications in our culture than it does in 4 another culture.</p> <p>5 There will be cultures where your sexual 13:57:54 6 proclivities are more or less private. So I'm really 7 meaning by that. And especially over cultures and over 8 times, that what we choose to keep private changes. 9 Cultural, all those words I used. I'm really referring 10 to the types of things that we agree to keep private. 13:58:11 11 "Agree" is a bad word. That we might want to keep 12 private.</p> <p>13 Q. Okay. Do you agree that you can have privacy 14 from some but not others?</p> <p>15 A. I do. 13:58:25</p> <p>16 Q. For example, you could have privacy from other 17 people who use your device but not from your ISP; right?</p> <p>18 A. That is certainly true.</p> <p>19 Q. And you could have privacy from other people who 20 use your device, but not from the websites that you 13:58:41 21 visit; right?</p> <p>22 A. Yes.</p> <p>23 Q. And so the word "privacy" just in and of itself 24 does not convey necessarily that you are free from 25 observation from everyone? 13:58:54 Page 102</p> | <p>1 wouldn't say now you can pee privately and put a period 2 on it. That's a very crappy analogy. I'm going to 3 change it and do it again. I'm sorry.</p> <p>4 Q. I've got to say I actually really like it.</p> <p>5 A. No, it's a bad analogy. 14:00:59</p> <p>6 Q. No, they're good ones. They're really good ones 7 and they're practical real-world examples. I like it.</p> <p>8 A. But I want to get one, yes, scatological.</p> <p>9 Q. Do you agree that by providing -- I guess let 10 me -- let me try and formulate a better question here. 14:01:21 11 Do you agree that if Incognito mode only 12 provides privacy from other people who use your device -- 13 well, now I put the answer in the question. Let me try 14 again.</p> <p>15 Do you believe that if Incognito mode conceals 14:01:38 16 your browsing activity from other people would use your 17 device, that Incognito mode provides a measure of 18 privacy?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Actually, maybe we will go to -- well, 14:02:05 21 I'll try this again with Data and Goliath, and you can 22 tell me if you want to go back to the source.</p> <p>23 You have a statement in there that says: "Most 24 people don't seem to care whether their intimate details 25 are collected and used by corporations. Most people are 14:02:21 Page 104</p> |
| <p>1 A. Again, it will depend how it's used. If I say, 2 you know, when you go to the bathroom, you're private in 3 there, and you find out later there's a camera. And I 4 say, "Well, don't worry, the camera went to the police; I 5 didn't see it," you're going to say what the hell. So it 13:59:12 6 depends on lot on how that word's used.</p> <p>7 Q. In the splash screen where Google says "now you 8 can browse privately and other people who use your 9 device" -- "your device won't see your activity," is it 10 your opinion that that conveys two separate concepts: 13:59:43 11 One, on the one hand, you can browse privately from 12 Google, and on the other hand, you can browse privately 13 from other people who use your device?</p> <p>14 A. I think it's actually kind of like the "camera 15 in the bathroom" story; right? What I said is: You go 14:00:02 16 to the bathroom, and it's private. What the splash 17 screen says is it's private. There's a period at the 18 end. There's not a caveat. There's not like from me, 19 from Google, from your neighbors, from your friends. It 20 is a -- it's given as a categorical. And that implies 14:00:23 21 that it is complete. That it is from everybody. Because 22 we're not saying only in this way, only in that way.</p> <p>23 If I wanted to convey to you that when you went 24 into the bathroom, it would be private from me, but the 25 police could watch you, I would kind of say that. I 14:00:45 Page 103</p> | <p>1 happy to exchange sensitive personal information for free 2 email, web search, or a platform on which to chat with 3 their friends."</p> <p>4 Do you agree with those statements?</p> <p>5 A. You know, I would not write that today. 14:02:39</p> <p>6 Q. Okay. What's changed?</p> <p>7 A. I think people's awareness has changed. People 8 are more aware of -- of in general how they're being 9 tracked on the internet. I think there's a feeling of 10 helplessness among people and so "happy," too, is a word 14:02:58 11 I would not use anymore. And I don't even know if it was 12 right then. I think people are more grudgingly 13 accepting, in many cases.</p> <p>14 There's a lot of unawareness. I find this even 15 in my classes when I try to teach the stuff, that 14:03:20 16 surprised the number of people that are surprised.</p> <p>17 There was a class last year, and there was 18 someone from Facebook in the class talking about Facebook 19 data collection and how it's used, and people are 20 expressing surprise that a lot of this is happening. 14:03:37</p> <p>21 And the former employee, who is now a student 22 there, said: "This is how Facebook works. Don't you 23 realize that?"</p> <p>24 So it is an interesting measure of complicated 25 things that are going on. And you know, that -- those 14:03:52 Page 105</p> |

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| <p>1 sentences imply a knowing and willing tradeoff that isn't 2 right today and I don't think it was right then.</p> <p>3 Q. Would you agree that some people just don't care 4 about data collection by companies like Google and 5 Facebook and Amazon? 14:04:13</p> <p>6 A. You used the word "some." So I will agree there 7 exists one person that just doesn't care.</p> <p>8 Q. Would you agree that there's a substantial 9 portion of the population that just don't care?</p> <p>10 A. Yeah, but I would make you define "substantial" 14:04:24 11 before I answer that one.</p> <p>12 Q. 40 percent.</p> <p>13 A. I would not agree with that.</p> <p>14 Q. Okay. Do you have any basis for refuting that, 15 you know, 40 percent of the population doesn't care? 14:04:40</p> <p>16 A. It sounds high and I don't have data.</p> <p>17 Q. Okay.</p> <p>18 A. Pew Research has data.</p> <p>19 Q. Okay. Would you agree that incognito, the term 20 "incognito" has a different meaning than private or 14:05:06 21 privacy?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And what is the meaning of "incognito"?</p> <p>24 A. Can I refer you to paragraph 25 of my report?</p> <p>25 Q. Yeah. 14:05:22</p> <p style="text-align: right;">Page 106</p> | <p>1 basically opens up a separate compartment --</p> <p>2 Q. Uh-huh.</p> <p>3 A. -- which will have no cookies from the regular 4 browsing. So there is a separate set of cookies.</p> <p>5 Q. Right. So that websites and Google and any 14:06:41 6 other entities on the web who may engage in tracking 7 cannot use the cookies on the browser that existed before 8 the Incognito session to track the user.</p> <p>9 Is that your understanding?</p> <p>10 A. No. 14:06:55</p> <p>11 Q. Have you seen -- okay. So what is your 12 understanding on that issue, then?</p> <p>13 A. It's what I said previously, that the private 14 browsing opens up a separate compartment where the 15 cookies from the regular browsing don't transfer over, 14:07:12 16 and new cookies are created.</p> <p>17 Q. Right. And then at the end of the session, 18 those cookies in the Incognito compartment are deleted; 19 right?</p> <p>20 A. That is correct. 14:07:22</p> <p>21 Q. Okay. And so to the extent any tracking occurs 22 in an Incognito session, it's based on the cookies in the 23 new Incognito compartment.</p> <p>24 Do you understand that?</p> <p>25 A. It is based -- 14:07:35</p> <p style="text-align: right;">Page 108</p> |
| <p>1 A. Good.</p> <p>2 Q. All right. One of the definitions you use is, 3 you say: "The Oxford English Dictionary defines 4 "incognito" as unknown, whose identity is concealed or 5 unavowed, and therefore not taken as known." 14:05:41</p> <p>6 Do you see that?</p> <p>7 A. I do.</p> <p>8 Q. Okay. And would you agree that in Incognito 9 mode -- well, let me -- let me back up.</p> <p>10 Do you understand that -- you have an 14:05:53 11 understanding of how Incognito mode functions; correct?</p> <p>12 A. Basically, yes.</p> <p>13 Q. And you have an understanding of how other 14 private browsers' modes function -- private browsing 15 modes function? 14:06:06</p> <p>16 A. Similarly, basically, yes.</p> <p>17 Q. Okay. And with respect to Incognito mode, you 18 understand that it automatically logs the user out of 19 their Google account.</p> <p>20 Do you understand that? 14:06:16</p> <p>21 A. Yes.</p> <p>22 Q. And do you understand that it blocks the sharing 23 of existing cookies with websites and Google and others 24 out there on the web?</p> <p>25 A. Right. What I understand it does, is it 14:06:28</p> <p style="text-align: right;">Page 107</p> | <p>1 MR. CROSBY: Object to the form.</p> <p>2 THE WITNESS: -- in part on those cookies, yes.</p> <p>3 Q. BY MR. BROOME: Okay. And what else is it based 4 on?</p> <p>5 A. Everything else Google or anybody else does. 14:07:42</p> <p>6 Q. Is it based on IP address?</p> <p>7 A. I don't know.</p> <p>8 Q. Is it based on any other data that Google 9 receives from the user other than cookies?</p> <p>10 A. Define "receives by the user" better. 14:08:07</p> <p>11 Q. Any information that is transmitted to Google 12 from, for example, an analytics or ad manager script.</p> <p>13 A. Okay. So you're saying that if I as a user 14 visit The New York Times --</p> <p>15 Q. Yeah. 14:08:26</p> <p>16 A. -- and do stuff, that analytics information that 17 goes to Google is from me?</p> <p>18 Q. For purposes of this question, sure.</p> <p>19 A. Okay. Got to go to the question again because I 20 lost the question. I'm sorry, I'm actually trying to -- 14:08:43</p> <p>21 this actually is complicated.</p> <p>22 Q. Yeah. No, let's --</p> <p>23 A. It's a bit complicated.</p> <p>24 Q. Okay. Is it your understanding that in the 25 ordinary course, Google uses cookies to track users? 14:08:49</p> <p style="text-align: right;">Page 109</p> |

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| <p>1 A. I do.</p> <p>2 Q. Does this refer to just providing users with</p> <p>3 some control?</p> <p>4 A. No, I think Google is making a stronger</p> <p>5 statement than some. They're saying that you can 19:17:17</p> <p>6 control. They're not saying you can control partly, you</p> <p>7 can control a little bit. You can control in these</p> <p>8 areas, not those areas. They're saying you can control</p> <p>9 it.</p> <p>10 Q. So earlier on in the deposition, you recall 19:17:33</p> <p>11 being asked questions about local privacy that's in</p> <p>12 Incognito or private browsing modes?</p> <p>13 A. Yes.</p> <p>14 Q. And so if you turn to paragraph 285 in your</p> <p>15 report in the last sentence, you reach the ultimate 19:18:04</p> <p>16 conclusion: "Google's disclosures give rise to a</p> <p>17 reasonable expectation that Google will not collect</p> <p>18 users' private browsing information." Correct?</p> <p>19 A. Yes.</p> <p>20 Q. And so is it your opinion that Google's 19:18:18</p> <p>21 representations to users are that it would only not</p> <p>22 collect -- it would only respect local privacy and not</p> <p>23 give any privacy from Google?</p> <p>24 MR. BROOME: Object to the form.</p> <p>25 THE WITNESS: I think Google is deliberately 19:18:35</p> <p style="text-align: right;">Page 226</p> | <p>1 THE WITNESS: Thanks much.</p> <p>2 THE VIDEOGRAPHER: Would counsel like to</p> <p>3 conclude the video record?</p> <p>4 MR. BROOME: Yeah, we can go off the record.</p> <p>5 MR. CROSBY: Yes. 19:20:24</p> <p>6 THE VIDEOGRAPHER: We are going off the record</p> <p>7 at 7:20 p.m., and this concludes today's testimony given</p> <p>8 by Bruce Schneier. The total number of media used was</p> <p>9 one and will be retained by Veritext Legal Solutions.</p> <p>10 (Time noted: 7:20 p.m. Eastern Daylight Time.)</p> <p>11 --oOo--</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 228</p> |
| <p>1 blurring that distinction in a way that -- to make users</p> <p>2 sort of unaware of the distinction. They use the word</p> <p>3 "we" a lot. You're in control. You know, control what</p> <p>4 we collect. So that taken with the splash screen, which</p> <p>5 says Chrome -- which says Chrome, I think it is -- that 19:19:03</p> <p>6 distinction between Chrome and Google, since Chrome is a</p> <p>7 Google service, is blurred.</p> <p>8 Q. BY MR. CROSBY: Did Google's disclosures that</p> <p>9 you've read ever limit its prudence to privacy to local</p> <p>10 control? 19:19:27</p> <p>11 MR. BROOME: Objection.</p> <p>12 THE WITNESS: You know, "ever" is a lot. I do</p> <p>13 not recall any.</p> <p>14 Q. BY MR. CROSBY: So just to be clear, would</p> <p>15 Google's disclosures that you've read apply to just 19:19:43</p> <p>16 Chrome or to its complete services?</p> <p>17 MR. BROOME: Object to the form.</p> <p>18 THE WITNESS: In many cases, Google talks about</p> <p>19 them as a company. They'll say things like "across our</p> <p>20 services." So they speak in many cases about everything 19:19:59</p> <p>21 they do.</p> <p>22 MR. CROSBY: I'll pass the witness.</p> <p>23 MR. BROOME: And nothing further from me.</p> <p>24 Thanks very much, Mr. Schneier. It was a real</p> <p>25 pleasure to meet you, and I appreciate your time. 19:20:16</p> <p style="text-align: right;">Page 227</p> | <p>1 I declare under the penalty of perjury under the</p> <p>2 laws of the State of California that the foregoing is</p> <p>3 true and correct.</p> <p>4 Executed on _____, 2022, at</p> <p>5 _____.</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11 _____</p> <p>12 SIGNATURE OF THE WITNESS</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 229</p> |

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| <p>1 STATE OF CALIFORNIA) ss: 2 COUNTY OF MARIN) 3 4 I, LESLIE ROCKWOOD ROSAS, RPR, CSR NO. 3462, do 5 hereby certify: 6 That the foregoing deposition testimony was 7 taken before me at the time and place therein set forth 8 and at which time the witness was administered the oath; 9 That testimony of the witness and all objections 10 made by counsel at the time of the examination were 11 recorded stenographically by me, and were thereafter 12 transcribed under my direction and supervision, and that 13 the foregoing pages contain a full, true and accurate 14 record of all proceedings and testimony to the best of my 15 skill and ability. 16 I further certify that I am neither counsel for 17 any party to said action, nor am I related to any party 18 to said action, nor am I in any way interested in the 19 outcome thereof. 20 IN WITNESS WHEREOF, I have subscribed my name 21 this 19th day of July, 2022. 22 23 24  25 LESLIE ROCKWOOD ROSAS, RPR, CSR NO. 3462 Page 230</p> | <p>1 <input checked="" type="checkbox"/> Federal R&S Requested (FRCP 30(e)(1)(B)) – Locked .PDF 2 Transcript - The witness should review the transcript and 3 make any necessary corrections on the errata pages included 4 below, notating the page and line number of the corrections. 5 The witness should then sign and date the errata and penalty 6 of perjury pages and return the completed pages to all 7 appearing counsel within the period of time determined at 8 the deposition or provided by the Federal Rules. 9 <input type="checkbox"/> Federal R&S Not Requested - Reading & Signature was not 10 requested before the completion of the deposition. 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 Page 232</p> |
| <p>1 IAN B. CROSBY, ESQ. 2 icrosby@susmangodfrey.com 3 July 19, 2022 4 RE: BROWN VS. GOOGLE LLC 5 JULY 18, 2022, BRUCE SCHNEIER, JOB NO. 5312337 6 The above-referenced transcript has been 7 completed by Veritext Legal Solutions and 8 review of the transcript is being handled as follows: 9 <input type="checkbox"/> Per CA State Code (CCP 2025.520 (a)-(e)) – Contact Veritext 10 to schedule a time to review the original transcript at 11 a Veritext office. 12 <input type="checkbox"/> Per CA State Code (CCP 2025.520 (a)-(e)) – Locked .PDF 13 Transcript - The witness should review the transcript and 14 make any necessary corrections on the errata pages included 15 below, notating the page and line number of the corrections. 16 The witness should then sign and date the errata and penalty 17 of perjury pages and return the completed pages to all 18 appearing counsel within the period of time determined at 19 the deposition or provided by the Code of Civil Procedure. 20 <input type="checkbox"/> Waiving the CA Code of Civil Procedure per Stipulation of 21 Counsel - Original transcript to be released for signature 22 as determined at the deposition. 23 <input type="checkbox"/> Signature Waived – Reading & Signature was waived at the 24 time of the deposition. 25 Page 231</p> | <p>1 RE: BROWN VS. GOOGLE LLC 2 BRUCE SCHNEIER, JOB NO. 5312337 3 E R R A T A S H E E T 4 PAGE____ LINE____ CHANGE_____ 5 _____ 6 REASON_____ 7 PAGE____ LINE____ CHANGE_____ 8 _____ 9 REASON_____ 10 PAGE____ LINE____ CHANGE_____ 11 _____ 12 REASON_____ 13 PAGE____ LINE____ CHANGE_____ 14 _____ 15 REASON_____ 16 PAGE____ LINE____ CHANGE_____ 17 _____ 18 REASON_____ 19 PAGE____ LINE____ CHANGE_____ 20 _____ 21 REASON_____ 22 _____ 23 _____ 24 WITNESS Date 25 Page 233</p> |

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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